

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	CSR-7057-Z
Application of BendBroadband's	)	CS Docket No. 97-80
Request for Waiver of 47 CFR § 76.1204(a)(1)	)	

To: Chief, Media Bureau

**COMMENTS**

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November 30, 2006

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**I. Introduction and Summary**

Choice Cable Television, ("Choice"), is a small cable television system that holds a cable television franchise from the Puerto Rico Telecommunications Regulatory Board ("the Board") for the Western, northwestern and southwestern portions of the island. After a substantial investment of over \$25 Million Dollars, Choice will complete the digital transition of its system. However, it's plans to expand its services, expand its client base, and hold on to it from the advances of satellite television providers, are being challenged by the requirements of section 76.1204(a)(1) of title 47 of the Code of Federal Regulations.

Accordingly, Choice presents these comments before the Commission in support of BendBroadband's Request for Waiver of 47 CFR § 76.1204(a)(1) ("Waiver Request") and requests that this petition be considered alongside it.

**II. BendBroadband's Petition**

In its Petition, Bend Broadband has made a powerful argument for the exemption of low cost set-top boxes (“LCSTBs”). In particular they point out that failure to grant the requested waiver will have a negative impact on the consumer and on the Company's operations and financial viability. Choice echoes and fully supports those comments, and would like to add a few particulars that apply to their particular situation.

First of all, there is some confusion as to whether the prohibition of deployment of new set-top boxes that do not conform with the new requirements, applies to refurbished units or only “new” boxes. We understand that the matter is pending before the Commission, and that the result of such decision might parts of our waiver petition moot. However, Choice has elected to present all of its arguments at this time.

### **III. Additional set-top boxes that qualify for the LCSTB waiver.**

BendBroadband’s petition asks for a waiver for a particular set-top box: the Motorola DCT-700. Choice requests the Commission to issue a waiver on two additional set-top boxes, the Motorola DCT-1000 and DCT-2000 series. Both of these set-top boxes fully comply with the Commission’s definition of a CE that qualifies for the low-cost waiver: they do not “contain personal video recording (PVR), high-definition, broadband Internet access, multiple tuner, or other similar advanced capabilities.”

Choice acquires refurbished versions of these boxes at a substantial discount allowing it to provide full digital service to its subscribers at a low

cost. The average cost of a refurbished DCT-1000 is \$45.00 and \$85.00 for the DCT-2000. Choice estimates that it will spend a total of 3 million dollars for the acquisition of set-top boxes for fiscal year 2007.<sup>1</sup> This represents almost 25% percent of its capital budget requirements for the upcoming year. The allocated amount will allow it to acquire 36,000 set-top boxes to cover expected growth in its client base.

However, the cheapest CableCARD-equipped set-top boxes will cost about \$190,<sup>2</sup> twice as much as our refurbished units. If this waiver is denied, Choice will be placed between the proverbial rock and a hard place. It will either have to reduce the amount of new subscribers it can add to its system<sup>3</sup> or reduce funds dedicated to comply with its expansion goals, with the expansion requirements included in its franchise agreement with the Puerto Rico Telecommunications Regulatory Board, and with State statutes that require the deployment of broadband facilities throughout our franchise area.

In light of this fact, we urge the FCC to grant a waiver and permit the deployment of Motorola's set-top boxes DCT-1000 and DCT-2000.

#### **IV. Additional arguments in support of our petition.**

The Commission has stated that the availability of these new set-top boxes through major electronic stores throughout the United States will encourage lower prices and more options for the consumer. While this may

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<sup>1</sup> Choice's fiscal year runs from January to December.

<sup>2</sup> *See*, BendBroadband's Request for Waiver of 47 C.F.R. 76.1204(a)(1), page 8, footnote 12.

<sup>3</sup> If Choice acquires the set-top boxes at \$190 each, it would only be able to add 15,749 subscribers in the next calendar year, instead of its projected 36,000.

be true for the Continental United States, it is a erred premise in Puerto Rico.

While the 48 contiguous States enjoy several large retail stores chains that compete with each other for the electronic needs of their customers, Puerto Rico has only two. There is no Best Buy, no Circuit City, or other major retail stores that specialize in this type of equipment. Puerto Rico has a series of Radio Shack stores and three Comp USA stores (all located in or near the San Juan metropolitan area and out of our franchise areas). This lack of competition will allow the retailers of these new set-top boxes to maintain artificially high prices on the island.

Accordingly the Commission cannot rely on the market move its invisible hand and protect Puerto Rican consumers. A more direct approach is required. Accordingly, Choice requests that the Commission grant the current waiver request.

Respectfully submitted.

In San Juan, Puerto Rico, this 30<sup>th</sup> day of November, 2006.

/s/ Jorge L. Bauermeister

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